Neutral Citation Number: [2025] EWHC 2761 (Admin)

Case No: AC-2024-LON-002644

**IN THE HIGH COURT OF JUSTICE**
**KING'S BENCH DIVISION**
**ADMINISTRATIVE COURT**
**SITTING IN LONDON**

Tuesday, 28th October 2025

**Before**:
**FORDHAM J**

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**Between:**

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| **THE KING (on the application of (1) THE BADGER TRUST (2) WILD JUSTICE)** | **Claimants** |
| **- and -** | |
| **NATURAL ENGLAND** | **Defendant** |
| **- and -** | |
| **SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS** | **Interested Party** |

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**David Wolfe KC** and **Barney McCay** (instructed by Leigh Day & Co) for the **Claimants**
**Paul Luckhurst** and **Sean Butler** (instructed by Natural England) for the **Defendant**
**Michael Fry** (instructed by Government Legal Department) for the **Interested Party**

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Hearing date and ruling: 16.10.25
Draft judgment: 20.10.25

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# Approved Judgment

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FORDHAM J

**FORDHAM J:**

## I. INTRODUCTION

1. This is a judicial review case about badgers. But what I have to decide are an issue about the redaction of documents in judicial review and an issue about whether to change the level of the shielding costs caps which are in place to protect the Claimants. I was able to announce my decisions on both issues at the end of a one-day hearing on 16 October 2025, with reasons to follow as they now do.

2. Environmental protection is familiar to judicial review Courts. In fact, the reason for existence of each of the four parties in the present case is or includes the protection of the environment. In the context of access to justice by judicial review, it is well-recognised that "members of the public and associations are naturally required to play an active role in defending the environment": R (Edwards) v Environment Agency (No.2) [2013] UKSC 78 [2014] 1 WLR 55 at §22. "Recognition of the public interest in environmental protection is especially important" and "the environment cannot defend itself before a court, but needs to be represented, for example by active citizens or non-governmental organisations": see Edwards at §§26, 28iii. I will need to return to the public interest imperative which arises in the context of access to environmental justice, and why the prospective cost capping rules are deliberately facilitatory.

3. Judicial review is supposed to be "a speedy audit of the legality of public decision-making": see R (TPL1) v SSD [2025] EWHC 1729 (Admin) at §86. There are protections within the judicial review process for public authorities. Sometimes, the invocation of those protections ends up slowing down the speedy audit and increasing the costs. That is illustrated by the present case. Natural England is the defendant public authority. It argued that it could administer a clean knock-out blow warranting the refusal of permission for judicial review, either because the modest threshold of arguability was not crossed, or because the case lacked utility by reason of its backward looking focus and plans for less badger culling in future. That invocation ultimately failed. With the benefit of oral submissions at a renewal hearing on 15 May 2025, I granted permission for judicial review. The substantive hearing is scheduled for 2 days in December 2025.

4. The target for challenge is a decision taken on 3 May 2024, to issue or renew 26 supplementary badger cull licences authorising farmers to kill badgers in the period from 1 June 2024 to 30 November 2024. Judicial review is available for a decision of that nature. But it is always unlikely that the speedy legal audit will be achieved prior to implementation. And it is inherently unlikely that a Court would deal with the case by way of interim relief, because that would mean blocking the implementation without resolving the substantive legal issues. So it is always on the cards that judicial review will be backward looking in this kind of case. That does not undermine the value of the legal audit. Nor is that value necessarily a function of the outcomes of cases. The public interest enterprise of judicial review accountability secures lawfulness. It promotes discipline. It exposes unlawfulness. It promotes public confidence in public authority decision-making.

5. I granted permission for judicial review because I was satisfied that the claim was properly arguable with a realistic prospect of establishing unlawfulness in public law terms, and securing a remedy. I did not see the backward-looking nature of the case, nor

the present policy position as to badger culling, as a clean knock-out blow. The issues are all at large for the judge who deals with the case in December.

6. Here is something of the nature of the case. Farmers are involved in badger culling pursuant to the licences. The decision whether to issue a badger culling licence raises a question about trying to reconcile (i) the statutory protection of badgers from harm and (ii) the relevant express purpose of preventing the spread of disease. Badgers are a species of animal. But so are cows. Vaccination is a reconciling response. A feature at or below the surface of the case – at least on the Claimants' case – is about farmer confidence and maintaining farmer confidence. This has been linked to the idea of farmer participation in the reconciling alternative of vaccination, to protect both the badgers and the cows, in circumstances where vaccination by teams of non-industry operatives is described as impracticable. Added to all of which are questions about clear evidenced advice, and about whether departure from that advice needed to be – and if so was – for good reason. Into this setting enters the legal idea which featured before me as part of the supposed knock-out blow. The idea was that Natural England is able to make its licensing decisions for "political" reasons. That contention has never been withdrawn. It was said to follow from the idea that central Government – if acting under supervision or intervention powers – would be able to act for broad "political" reasons. All of these were among the jigsaw pieces of a case which I was satisfied was arguable and important and required substantive determination at a substantive hearing.

## II. REDACTION

7. The Courts have in recent years been concerned to see public authority decision-makers redacting the names of officials from disclosed decision-making documents. The issue arose in the present case because of the redactions I encountered when pre-reading for the 15 May 2025 hearing. I forewarned the parties that I wished to understand the justification for the redactions.

8. Looking at everything I now know, I think the problem which arose was a function of Natural England's virtuous and proper practice of making pre-action disclosure of decision-making documents. It was back on 19 July 2024 that there was a response to the Claimants' pre-action letter. The Legal Services Team provided the decision-making documents, in line with Natural England's duty of candour. They also thought about redactions. The July 2024 letter of response gave what Mr Luckhurst fairly described as a relatively broad-brush explanation. It said:

> ***Certain documents or parts of documents disclosed have been redacted based on public/staff safety, personal information or legal privilege grounds although given that Dr Brotherton and Dr Harmer's names are now in the public domain we have not redacted every instance of their names. With other redactions, for example, within the fox control assessment all protected sites and associated licensed areas have been redacted however we are providing the Licence Annex Bs for all counties which provide details of all protected sites that have been assessed. These Annex Bs will be published along with the new licences (redacted) in due course. Not all other listed documents will be published. Given the very live safety concerns we have about our staff and others in relation to this subject (stemming from past events) we stress the importance of keeping documents disclosed to you, and any names of staff involved in these proceedings, for the purposes of the litigation only.***

9. I see nothing wrong or inadequate in that response at that time. It was a point in time when there were no legal proceedings. The Court was not involved. There was no open

justice consideration, just candour considerations. The Claimant's team were able to push back as they felt fit, so far as candour was concerned.

10. Proceedings were then commenced on 2 August 2024. The previously disclosed documents were filed by the Claimants within their claim bundle. They were not put in evidence by Natural England. Anyone reading the then Judicial Review Guide 2023 at §15.5.2 would have seen this: "When a redacted or edited document is included in evidence, the fact that redactions have been made, and the reasons for them, should be made clear, preferably on the face of the redacted document". The grounds for judicial review made reference to the fact that within the decision-making documents "names have been redacted".

11. When I raised the issue of redaction ahead of the renewal hearing, Natural England responded with promptness and propriety. First, the unredacted decision-making documents were brought to the hearing and provided to the Claimants' legal representatives, against an undertaking of no onward disclosure pending application to the Court. Second, Natural England informed the Court of its wish to make an application for a court order. An application was subsequently made on 23 May 2025. The scope of the redactions has been refined and refocused. It was not possible to deal with an application at the renewal hearing. The parties wished me, as the Judge who had dealt with permission and had raised the concern, to deal with this issue and the costs cap. They were prepared to wait until my diary allowed it.

12. The culmination of all of this is that Natural England has applied for an order which has the following features and implications. It is not opposed by the Claimants nor by the Secretary of State. It will enable the filing of the unredacted documents, as a confidential (unredacted) bundle, to which a tailored restriction will apply. The tailored restriction is that any member of the press or public who seeks permission to access the confidential (unredacted) bundle or any of its contents will trigger a notice requirement whereby the Court will consider whether to grant or refuse permission, only after first hearing from Natural England. Meanwhile, the Claimants' representatives and – if needed – the Judge will have access to the confidential (unredacted) bundle, under suitably protective arrangements. They involve a confidentiality ring.

13. The Court is duty-bound to consider open justice and may need to raise or watch out for issues of its own initiative. Indeed, the Court is at its most vigilant when the parties are for their part agreed that information should be kept from the public: Manchester City FC Ltd v FA Premier League Ltd [2021] EWCA Civ 1110 [2021] 1 WLR 5513 at §56. This is why parties cannot contract out of their open justice obligations: R (MTA) v SSHD [2024] EWHC 553 (Admin) at §26.

14. I was entirely satisfied by the witness statement evidence, a revised detailed schedule exhibited by Natural England's Director of Legal and Governance Anita Chib, and the submissions of Mr Luckhurst and Mr Butler, that the order sought is fully justified. It involves the measured, precautionary and proportionate protection of prior notice and the opportunity to be heard if access is sought: CPR 5.4C. I am satisfied that this limited derogation from open justice is necessary. On the face of it, there are "good and specific reasons" for a provisional protective approach: R (IAB) v SSHD [2024] EWCA Civ 66 [2024] 1 WLR 1916 at §§29, 36. Phone numbers have remained redacted, which is something which "will usually be permissible": IAB at §28. The names of "junior" staff members whose role was "peripheral" have remained redacted, for two combined

reasons. First, because there are concerns relating to risk and safety in the context of this area of decision-making. Second, because of the peripheral roles which means very limited relevance. The safety concerns link to what was said proactively in the letter of response. I have read the witness statement evidence of John Barrow, Natural England's Principal Manager of Security. He has exhibited two internal policy instructions which relate to staff and show that the concerns are taken seriously within the organisation. He has illustrated why that is.

15. Reference was made in IAB to national security and other risks. A practical working illustration considering national security risks and peripheral relevance is R (Dana Astra IOOO) v Secretary of State for Foreign, Commonwealth and Development Affairs [2025] EWHC 289 (Admin) at §101. An example considering commercial sensitivities and lack of relevance is R (Wilkinson) v Enfield LBC [2024] EWHC 1193 (Admin) [2024] PTSR 1532 at §267. I am not striking any final or determinative balance. That would be wrong in principle. It could foreclose on how an application by the press or public might be decided, if one is made. In this case, the question is more nuanced. What I am satisfied is necessary is the precaution that any application for the unredacted documents from the court records should trigger a prior right to be heard on the part of Natural England, so that an informed decision can be taken. The confidentiality ring arrangements between the parties are approved. I very much doubt whether the names would feature at the substantive hearing, or whether the Judge even needs the unredacted documents. I would expect that everything said at the substantive hearing and everything in the skeleton arguments and hearing bundles should be transparent and reportable. But these are matters for that Judge, if they arise.

16. There is, I think, a takeaway point from what happened in this case. Once proceedings are commenced, documents within the court papers which have been redacted need to be considered by the redacting party. That includes where they were disclosed at a pre-action stage and have been filed by another party. The Court needs assistance. There may need to be a reference to an explanation in a pre-action letter, which may need further focus. There may well need to be a witness statement: cf. R (XY) v SSHD [2024] EWHC 81 (Admin) [2024] 1 WLR 2272 at §141. There may need to be an application, raised promptly in the AOS. That is because there are now legal proceedings, there is now the open justice principle, and there is a Court needing assistance as to how to respect the open justice principle and protect any relevant interest.

## III. VARIATION OF AARHUS COSTS CAPS

### Public Hearing

17. When costs caps are sought to be varied, the Court will stand by to provide a hearing in private where this is necessary. Signalling this protection is important to avoid a chilling effect: see R (RSPB) v Secretary of State for Justice [2017] EWHC 2309 (Admin) [2018] Env LR 13 at §57. In the present case there was no need to discuss third party funders or donors. There were annual accounts, but these are published. Nobody asked for any part of the hearing to be held in private. Everything that was said in court could be reported.

### Aarhus Costs Caps

18. The Claimants are associations who are playing an active role in defending the environment. They are non-governmental organisations who are defending the

environment before a court. The Aarhus Convention of 25 June 1998 imposes international law obligations relating to access to environmental justice (Article 9). Access to justice includes holding national public authorities accountable to standards of national law which relate to the environment (Article 9(3)). That includes the legal audit of judicial review in an environmental protection case. A golden rule is that access to justice procedures must not be "prohibitively expensive" (Article 9(4)).

19. When it comes to costs in judicial review, there is a recognised reconciliation of public interests, both the public interest as to avoiding deterring claims on the one hand, and the public interest as to exposing the resources of public authorities on the other: see Responsible Development for Abaco Ltd v Christie [2023] UKPC 2 [2023] 4 WLR 47 at §75. One possibility which is familiar in environmental cases is that the judicial review Court may decide it is appropriate to make no order for costs even if a claim has failed: R (Greenpeace Ltd) v Secretary of State for the Environment, Food and Rural Affairs [2005] EWCA Civ 1656 [2006] Env LR 627 at §§38-40; Abaco at §73. One problem with that response to the public interest is that it comes only at the very end of the case. That is why prospective costs orders were developed out of the Courts' general statutory costs discretionary powers: see Abaco at §78.

20. CPR Part 46 Section IX deals with costs limits in Aarhus Convention claims. The definition of such a claim (see CPR 46.24(2)(a)) is referable to the legality of a body exercising public functions within the scope of Aarhus Article 9(1)-(3). The parties are agreed that this case falls squarely within that definition. The breadth of the Aarhus definition could include a polluter seeking to challenge an environmental protection measure, which is why I was unable to see the Aarhus scope as a rigid test for any uniformly intensity of reasonableness review: R (Fighting Dirty Ltd) v Environment Agency [2024] EWHC 2029 (Admin) at §34i. There are different sorts of Aarhus claims and there must be room for a context-specific approach to costs caps. There are Aarhus claims and there are environmental protection Aarhus claims.

The Public Interest Imperative

21. The Aarhus requirement that costs must not be prohibitively expensive arises from "the public interest in the protection of the environment" and "the need for the public to play an active role in that protection": RSPB at §19; Edwards at §§32, 35. That encapsulates the public interest imperative which arises in the context of access to environmental justice. It is distinct from general cost capping orders. And it is miles away from general considerations as to security for costs.

Rule 26 Caps

22. CPR 46.26 (as inserted from 1 October 2023) contains specific Aarhus costs caps, absent an upward or downward variation by the Court:

> ***46.26.— Limit on costs recoverable from a party in an Aarhus Convention claim. (1) Subject to rules 46.25 and 46.28, a claimant or defendant in an Aarhus Convention claim may not be ordered to pay costs exceeding the amounts in paragraph (2) or (3) or as varied in accordance with rule 46.27. (2) For a claimant the amount is— (a) £5,000 where the claimant is claiming only as an individual and not as, or on behalf of, a business or other legal person; (b) £10,000 in all other cases. (3) For a defendant the amount is £35,000. (4) In an Aarhus Convention claim with multiple claimants or multiple defendants, the amounts in paragraphs (2) and (3) (subject***

***to any direction of the court under rule 46.27) apply in relation to each such claimant or defendant individually and may not be exceeded, irrespective of the number of receiving parties.***

Rule 27 Variations

23. CPR 46.27 deals with variations, whether upwards or downwards. Here are CPR 46.27(1)-(4):

> ***46.27.— Varying the limit on costs recoverable from a party in an Aarhus Convention claim. (1) The court may vary the amounts in rule 46.26 or may remove altogether the limits on the maximum costs liability of any party in an Aarhus Convention claim. (2) The court may vary such an amount or remove such a limit only on an application made in accordance with paragraphs (5) to (7) ("an application to vary") and if satisfied that— (a) to do so would not make the costs of the proceedings prohibitively expensive for the claimant; and (b) in the case of a variation which would reduce a claimant's maximum costs liability or increase that of a defendant, without the variation the costs of the proceedings would be prohibitively expensive for the claimant. (3) Proceedings are to be considered prohibitively expensive for the purpose of this rule if their likely costs (including any court fees which are payable by the claimant) either— (a) exceed the financial resources of the claimant; or (b) are objectively unreasonable having regard to— (i) the situation of the parties; (ii) whether the claimant has a reasonable prospect of success; (iii) the importance of what is at stake for the claimant; (iv) the importance of what is at stake for the environment; (v) the complexity of the relevant law and procedure; and (vi) whether the claim is frivolous. (4) When the court considers the financial resources of the claimant for the purposes of this rule, it must have regard to any financial support which any person has provided or is likely to provide to the claimant.***

24. Here are CPR 46.27(5)-(7):

> ***(5) Subject to paragraph (6), an application to vary must— (a) if made by the claimant, be made in the claim form and provide the claimant's reasons why, if the variation were not made, the costs of the proceedings would be prohibitively expensive for the claimant; (b) if made by the defendant, be made in the acknowledgment of service and provide the defendant's reasons why, if the variation were made, the costs of the proceedings would not be prohibitively expensive for the claimant; and (c) be determined by the court at the earliest opportunity. (6) An application to vary may be made at a later stage if there has been a significant change in circumstances (including evidence that the schedule of the claimant's financial resources contained false or misleading information) which means that the proceedings would now— (a) be prohibitively expensive for the claimant if the variation were not made; or (b) not be prohibitively expensive for the claimant if the variation were made. (7) An application under paragraph (6) must— (a) if made by the claimant— (i) be accompanied by a revised schedule of the claimant's financial resources or confirmation that the claimant's financial resources have not changed; and (ii) provide reasons why the proceedings would now be prohibitively expensive for the claimant if the variation were not made; and (b) if made by the defendant, provide reasons why the proceedings would now not be prohibitively expensive for the claimant if the variation were made. (Rule 39.2(3)(c) makes provision for a hearing (or any part of it) to be in private if it involves confidential information (including information relating to personal financial matters) and publicity would damage that confidentiality.)***

What are the Rule 26 Caps?

25. In a costs capping variation judgment of November 2018, the then DHCJ Nathalie Lieven QC described the equivalent caps in the then rules as "the normal amounts" and "the general position": R (CPRE Surrey) v Waverley Borough Council [2018] EWHC 2969 (Admin) at §§9, 15. Mr Wolfe KC adopts that description. He goes further and says the caps in Rule 26 involve the rule-maker striking the balance, which a variation should not undermine or subvert. He cites the Government's August 2012 consultation response which said: "the Government takes the view that a cap of £5,000 [or £10,000 for an

organisation] is a proportionate amount to ask individual claimants to pay". Mr Luckhurst says the Rule 26 Caps are just a default position, a starting point. He accepts the onus is on any applicant seeking a CPR 46.27 variation to show that it is appropriate under the provisions of that rule. He relies on the November 2016 Government response set out in RSPB [2017] EWHC 2309 (Admin) [2018] Env LR 13 at §21. That response spoke of "default starting points". It also said "those applying to vary the costs caps will need to demonstrate clearly to the court that they have a valid case for a variation". Mr Luckhurst does not quarrel with that.

26. In my judgment the significance of the Rule 26 Caps of £5k and £10k is as follows. They supply the initial answer in every Aarhus case, unless and until a Court identifies an appropriate variation based on assessing what would avoid the proceedings being prohibitively expensive. They are not subverted by a variation which would "go behind that figure": cf. Edwards at §§32-33. But they are not just a placeholder. The Court is, at least, entitled to regard them as "normal" and "general". That was the language used by the Court in CPRE. In my judgment, it is language which involves no error or misappreciation. The Rule 26 Caps can be taken to have been chosen by rule-makers, on a principled, informed and insightful basis. It can properly be taken that the rule-makers – acting in an informed and insightful way – would have been trying to do three things. First, to have close regard to the importance of access to environmental justice with its accompanying public interest imperative. Second, to avoid chilling consequences for responsible individuals and groups who would wish to access environmental justice in the public interest, by clear signalling accompanied by flexibility of application. Third, to minimise any proliferation of satellite litigation, including its own chilling implications. This is why there is an onus on a party wanting to vary them, whether up or down. This is why a clear demonstration would be needed for a variation, as Natural England accepts. That makes the Rule 26 Caps an even-handed starting point. They can be expected generally to provide an answer, at least in a paradigm environmental protection context, where a claimant seeks access to environmental justice, with undiluted public interest motivations. They are in the nature of a soft presumption. They are a basis for parties to be able to get on with environmental judicial review cases. All of which is why there is an onus, as Mr Luckhurst rightly accepts.

27. I do not think there is more, or less, to it than that. I do not think any of what I have said is a gloss on the rules. I do not think any of is cumbersome or sophisticated. In fact, I think it is very straightforward and easy to understand and apply. It means the Rule 26 Caps involve giving a signal, in a litigation context where signalling particularly matters. They are not just a placeholder. A variation decision does not start with a clean-sheet, as if the Rule 26 Caps did not exist or their levels were unknown.

28. To understand this, take the following familiar example. There is a rule which says, absent a variation, a judicial review defendant has 35 days to file detailed grounds (CPR 54.14). The general proviso allowing always for a variation has already been prescribed (CPR 3.1(2)(a)). Any defendant in any judicial review case can ask for an enlarging variation. Any claimant in any judicial review can ask for an abridging variation. The Court will approach any requested variation on its merits. A variation is not a subversion of a carefully designed balance. But when the Court considers a variation, it does not start with a clean slate. It does so against its understanding that 35 days is a normal or general rule. It was written by rule-makers who thought about the intended speedy audit of judicial review, who reached an informed assessment, intending to provide a generally

appropriate and workable answer. Certainly, in paradigm cases. It is in the nature of a soft presumption. None of which involves complexity or sophistication.

What is Limb (a)?

29. In deciding whether to allow a variation, the central focus is on prohibitive expensiveness. The idea of prohibitive expensiveness of proceedings derives from Aarhus Article 9(4). It is the idea at the heart of the framing of Rule 27 (see CPR 46.27(2)(3)). It is the explanation required of a party seeking a variation (CPR 46.27(5)(a)(b)). It has two limbs. Prohibitive expensiveness Limb (a) is this: where likely costs exceed the claimant's financial resources (CPR 46.27(3)(a)), having regard to a single mandatory relevancy of third party financial support (see CPR 46.27(4)).

30. What is Limb (a)? I think the answer is this. Limb (a) is about real-world unaffordability of the actual case for the actual claimant, in light of the money which the claimant has or can access. It is really a kind of means test. It is a first way in which a level of costs of proceedings can be prohibitively expensive. That is because Limbs (a) and (b) are an "either … or" for prohibitive expensiveness of proceedings.

31. If a Court were considering imposing a fine on an individual, a first question could be about real-world affordability for that individual. This would be a question about means. It is real-world because theoretical ability to pay – money in a bank – is not the answer. There must be a practical, realistic ability to pay. The money in the bank may be needed to put food on the table for the children. You might decide that the fine is beyond the individual's actual means, and so you would not impose it for that reason. That would be like a Limb (a).

32. Limb (a) is sometimes called the "subjective" limb. That really means it is about the actual circumstances of the individual claimant. In its CJEU reference, the Supreme Court used "subjective" to mean "by reference to the means of the particular claimant": Edwards at §23(2). It is all about that person and what they can and cannot afford. Labelling Limb (a) as "subjective" also makes sense when you are distinguishing the other limb – Limb (b) – which, after all, is described as "objectively" unreasonable. But care may be needed with the idea of subjectivity. If the claimant – genuinely but subjectively – saw the entirety of their £1m bank balance as needed for their future grandchildren, a Court could readily say that a £5k costs cap did not exceed their financial resources. That would be a kind of objectivity. But it would be Limb (a).

33. I do not think there is more, or less, to it than that. I do not think any of what I have said is a gloss on the rules. I do not think any of it is cumbersome or sophisticated. In fact. I think it is very straightforward and easy to understand and apply. And I am not sure, having listened to them and read their submissions, that Mr Luckhurst and Mr Wolfe KC would disagree with any of what I have said about Limb (a).

What is Limb (b)?

34. Prohibitive expensiveness Limb (b) is where likely costs are objectively unreasonable, having regard to six mandatory relevancies (CPR 46.27(3)(b)). What is Limb (b)? I think the answer is this. It is an objective standard, notwithstanding that the costs are actual costs incurred by the public authority and notwithstanding that they are real-world affordable for the actual claimant. The objective limit is not objective affordability. It is

objective reasonableness. It is objective reasonableness to promote and secure access to environmental justice, with its public interest imperative. It is applicable to the contours and character of the parties, and the nature and implications of the proceedings. Hence the six prescribed mandatory relevancies (CPR 46.27(3)(b)).

35. It is vital to understand why there is a second limb. Limb (b) is not a second way to defeat a claimant for whom the proceedings are real-world unaffordable. Limb (b) is a second way to protect a claimant for whom the proceedings are real-world affordable. It arises if the first way has failed. Its premise is that there is real-world affordability. What this means is that, notwithstanding that the costs are the real costs of the actual case, and notwithstanding that the costs are within the claimant's real-world affordability, they are still assessed as objectively unreasonable. It means there is a second question, after considering the claimant's means. It starts with real-world unaffordability, but then turns to objective unreasonableness. These are the two, independent bases of prohibitive expensiveness.

36. If a Court were considering imposing a fine on an individual, the court might need first to be satisfied as to real-world affordability for that individual. This would be a question about means. You might decide that the fine is within the individual's actual means. But you would then ask another question, about appropriateness and proportionality. That would be like a Limb (b).

37. Why is there this additional layer of protection, beyond real-world affordability? The answer is because we are talking about the importance of access to environmental justice with its accompanying public interest imperative. The costs caps are facilitatory. They are signalling an encouragement. That is because legal audits of public authority environmental decision-making promote a key public interest. At least in the case of paradigm environmental protection. So, that is the second key point: the application of Limb (b) is in the context of facilitating access to environmental justice with its accompanying public interest imperative. The approach is facilitative.

38. Limb (b) is not framed as a test of affordability. It is framed as a test of reasonableness. With its 6 mandatory relevancies, it looks at the situation of both parties, and the nature and implications of the case as an environmental judicial review. It thinks, deliberately, about what is needed by the environment (factor (iv)). That does not mean over-generosity. It does not mean anything goes. The situation of a claimant (factor (i)) can overlap with facts which also informed real-world affordability. A polluter resisting an environmental protection measure promoted by a public authority is likely to struggle to invoke objective unreasonableness for actual costs which are, for the claimant, real-world affordable. So is a wealthy landowner whose invocation of environmental protection happens to coincide with the protection of "extensive individual economic interests" (Edwards at §28ii). The situation of the defendant public authority (factor (i)) could involve its size and resources, or how its own environmental protection mission could be threatened. There are questions about importance, for the claimant and "for the environment" (factors (iii) and (iv)). There are questions of viability of the claim (factors (ii) and (vi)). There is a question of legal complexity (factor (v)). These are the features which inform whether there should be a shield from the real costs of litigation – albeit that they are real-world affordable for the claimant – by reference to what is an objectively reasonable measure of prohibitive expense, in the public interest world of environmental protection and legal audits of public authority decision-making.

39. When posing the questions for the CJEU in Edwards (see Case C-260/11 [2013] 1 WLR 2914 at §23), the domestic courts had been dealing with a standalone requirement of prohibitive expensiveness (see CJEU judgment at §25). The question as formulated reflected thinking about affordability. First, there was affordability on a so-called objective basis ("the ability of an 'ordinary' member of the public to meet the potential liability for costs"). Second, there was affordability on a so-called subjective basis ("the means of the particular claimant"). This thinking had been seen in earlier domestic case-law: see the Supreme Court judgment [2014] 1 WLR 55 at §12.

40. In response, the CJEU had described "the financial situation of the person concerned" (CJEU at §40; SC at §22). It had then said that real-world affordability ("solely") was not enough. But the CJEU did not frame a second, objective requirement based on affordability, for ordinary members of the public or otherwise. It would have been very easy to do so. The Court spoke of costs which were not "objectively unreasonable", which it directly linked by the CJEU to a public interest imperative where "members of the public and associations are … required to play an active role in defending the environment" (CJEU §40; SC §22).

> ***That assessment cannot, therefore, be carried out solely on the basis of the financial situation of the person concerned but must also be based on an objective analysis of the amount of the costs, particularly since, as has been stated in para 32 of the present judgment, members of the public and associations are naturally required to play an active role in defending the environment. To that extent, the cost of proceedings must not appear, in certain cases, to be objectively unreasonable…***

This is the underpinning of Limb (b). It is a standard – after real-world affordability has already been ensured – intended to facilitate responsible and viable claims which invoke access to environmental justice, because of the accompanying public interest imperative. Especially in paradigm environmental protection cases.

41. In fact, even if this standard had been framed – whether by the CJEU or in Limb (b) – as a standard of "reasonable affordability", it would still need to be approached understanding that it is intended to facilitate responsible and viable claims which invoke access to environmental justice, because of the accompanying public interest imperative, and especially in paradigm environmental protection cases.

42. Again, I do not think there is more, or less, to it than that. Again, I do not think any of what I have said is a gloss on the rules. I do not think any of is cumbersome or sophisticated. Again, I think it is very straightforward and easy to understand and apply. What I have said aligns most closely with the submissions of Mr Wolfe KC. That leaves two footnotes.

43. First, as to whether real-world affordability can feature within Limb (b), I think it can to a point. There is room for overlap, as Mr Luckhurst points out. As I have said already, the situation of a claimant (factor (i) in Limb (b)) can overlap with facts which also informed real-world affordability. The situation of the parties could, for example, include resources and access to third party funding which do more than show real-world affordability (Edwards §28ii). But what Limb (b) is not is a re-run of Limb (a). It cannot be the case that real-world affordability drives a conclusion of objective reasonableness. That would subvert the rule and undermine the public interest aims, as Mr Wolfe KC rightly points out.

44. The second footnote is about discretion and predictability. Limb (b) is described as an "objective" standard of unreasonableness. Its application is case-specific and context-specific. Limb (b) is sometimes described as a discretion. The word "may" in CPR 46.27(2). A careful reading of the rule appears to connote a possible residual discretion for refusing an upward variation even though it would not be prohibitively expensive (CPR 47.27(2)(a)), but no residual discretion for making any downward variation unless it is avoiding prohibitively expensive costs (CPR 47.27(2)(b)). I have put residual discretion to one side and focused in this case on prohibitive expensiveness. Prohibitive expensiveness is certainly an evaluative judgment, with room for appreciation and judicial latitude. I say this because open "discretion" can be an enemy of predictability and foreseeability. The greater the clarity, objectivity and predictability, the better.

My Conclusion

45. My conclusion is this. Even if I were to assume in Natural England's favour that what can be shown is Limb (a) real-world affordability of an increase beyond the Rule 26 Caps of £10k per claimant, to the increased caps sought by Natural England of £20,000 (Wild Justice) and £30,000 (Badger Trust) or some intermediate position, I have still been left wholly unpersuaded by Natural England as to Limb (b) and objective unreasonableness. I would reach the same conclusion even if the Rule 26 Caps were in the nature of placeholder caps, so that the question of variation is approached by reference to prohibitive expensiveness, addressing the Rule 27 variation provisions as if the levels within the Rule 26 Caps provisions had no relevance or presumptive gravitational force at all. And I would reach the same conclusion even if Limb is a standard, in the context of access to environmental justice, of "reasonable affordability". I think this is a clear-cut case.

My Reasons

46. I think the rules were designed to be straightforwardly understood and applied. I do not think the rule-makers envisaged elaborate analysis or complicated reasoning. I have considered each of the statutory relevancies applicable to each Limb. I have considered all of the points made in writing and orally, and the entirety of the evidence filed. I see no vice in my expressing my reasons as concisely as possible, and focusing on the headline points.

47. Wild Justice is a small not for profit company funded by donations. It has two unpaid directors, a paid CEO, and two part-time members of staff. It exists for the purposes of education, campaigning, research and litigation. Litigation takes 75% of its financial resources, because litigation is expensive. It went into this litigation having committed and budgeted to pay a share of £47.5k, making allowance for the Aarhus £10k towards Natural England's costs if the claim were to fail. It had cash at the bank of £57,576 on 8 October 2025, and the increase sought by Natural England would wipe out half of that. It has monthly outgoings of £7.2k. If there is real-world affordability for a higher cap, it comes at a heavy cost. I accept the witness statement evidence, which is maintained in circumstances of an ongoing duty of candour, that Wild Justice would reluctantly withdraw with a materially increased cap.

48. Badger Trust is a charity with a Board of Trustees. It is funded by donations. It has a Board of Trustees. It is required by the Charity Commission to have a reserves policy. Its reserves policy aims to ringfence cover for a projected 12 months' of expenditure.

Even if I take Mr Luckhurst's presentation of the figures, there would at 31 December 2024 have been £326k reserves and projected expenditure of £310k. Badger Trust went into this litigation having committed and budgeted to pay a share of £31k, making allowance for the Aarhus £10k towards Natural England's costs if the claim were to fail. If there is real-world affordability for a higher cap, it comes at a heavy cost. It would mean compromising a responsibly adopted reserves policy. Again, I accept the witness statement evidence, which is maintained in circumstances of an ongoing duty of candour, that Badger Trust would reluctantly withdraw with a materially increased cap.

49. It would undermine the public interest imperatives of facilitating access to environmental justice if varied caps impeded the pursuit of this claim. Mr Luckhurst told me it was not Natural England's intention to "stifle" this claim. He reserved his position on whether a duty of candour applies to the reasons for pursuing a variation. I do not need to address that point for the purposes of my decision. I have looked at the position, as regard the present claim and the prospect of future claims as a repeat player, objectively and on the evidence.

50. The present claim is a viable claim. It has achieved permission through the filter of the permission stage, at which Natural England's entirely legitimate resistance failed, having cranked up the costs. I would not say there is a strong prima facie case, as if applying the test associated with mandatory interim relief. The rule asks about "reasonable prospect of success" – not the strength of the claim – and it later asks about whether the claim is "frivolous" (CPR 46.27(3)(b)(ii) and (vi)). The phrase "reasonable prospect" has been described as more demanding than permission-stage arguability (Edwards SC at §28i). I will not pause to consider the fine distinction – if any – between "realistic" and "reasonable" prospects. It is not a test of "strong prima facie case". It is not intended to turn Aarhus costs variations into dress rehearsals to assess the strength of the claim. I am satisfied that this claim has a reasonable prospect of success.

51. There is already, in effect, a doubled cap in place. If one of these two NGOs had been able to litigate the case, there would have been a single £10k cap. The issues and the workload would have been identical. But because two NGOs joined forces, there is £20k in place (CPR 46.26(4)).

52. What is at stake is important for these two NGOs. It is also of real importance for the environment. It is an environmental protection case. I do not see this as a case with "limited practical significance for the protection of the environment" (cf. Edwards SC at §36). It is about Natural England's decision-making approach. It involves a backward looking legal audit. There is a bigger picture. Indeed, the very fact of that legal audit promotes a public interest, in an environmental protection context. These legal audits are important "for the environment" (CPR 46.27(3)(b)(iv)). This one is. If Natural England went wrong in public law terms in this case, it matters "for the environment". It could certainly make a difference – whether direct and obvious or whether indirect and more subtle – looking forward.

53. This case is properly to be seen as a paradigm environmental protection case. It is undiluted by "individual economic interests" or mixed purposes or combination public/private interests. This is a clear point of distinction with the CPRE case, where the cap was varied for a single-issue interest group (POW: Protect Our Waverley), resisting a particular development, who could raise large sums of money from "local resident property owners" (§§13, 21).

54. The situation of Natural England as defendant is that it is a public authority acting as an environmental regulator. It has public interest aims and objectives. It operates with public money. Like Badger Trust and a reserves policy, there are stewardship responsibilities to which Mr Luckhurst is right to point. All of this will very often be the case in access to environmental justice judicial review cases. Natural England has won cases in the past and may win this one. Its legal costs are real, and will involve a deficit even if it succeeds. Sometimes public authorities have to accept the practical implications of legal audits and irrecoverable costs. It is always thus with legal aid, for reasons themselves the product of arrangements which address access to justice and the public interest. Natural England has an annual budget of £350m and a legal budget of £2.32m per year.

55. The situation of the Claimants includes crowdfunding endeavours. These have been successful. The target of £52,486 was slightly exceeded, with £57,180 being achieved within 5 months. Crowdfunding was always factored into the plan for the litigation. It has succeeded. There was, in my judgment, nothing unreasonable in the way it has been approached. The Claimants did not go for a bigger figure of £80,000 which they described as originally contemplated. They might have done. They might have succeeded. They might now succeed further, though time is tight for a December 2025 hearing. But even assuming that this supports Natural England as to real-world affordability under Limb (a) (CPR 46.27(3)(a) and (4)), it does not go further and indicate objective reasonableness. All of the arrangements put in place were eminently reasonable: enlisting an expert team of specialist lawyers, including a KC and a junior and specialist solicitors, to maximise the chances of succeeding; trying to avoid unnecessary satellite hearings, including as to permission and costs caps; lawyers acting at discounted rates; a balanced and sensibly pitched crowdfunding exercise. I see nothing to criticise; and indeed nothing which a Court can appropriately be asked to criticise.

56. It is in the interests of access to environmental justice, with its public interest imperative, that NGOs like Wild Justice and Badger Trust should retain the viability to be "repeat players". Objective reasonableness does not mean room for one, or even two, more cases. Proper access to environmental justice for a responsible NGO cannot mean a system of limited "credits", after which the NGO is bust or effectively excluded, with the environment unprotected until someone has the energy to start up a new NGO with a new set of "credits". Space to be a repeat player does not mean litigating everything with no ceiling and no filter. Robust application of arguability and discretionary bars are designed as a filter. Two of the statutory relevancies are concerned with viability: reasonable prospect of success; and non-frivolous claims (CPR 46.27(3)(b)(ii) and (vi)). Objective reasonableness must mean Wild Justice and Badger Trust litigating this viable claim without the shadow that the next judicial review claim or claims is out of reach.

57. Finally, the signals which the law gives in environmental judicial review cases matter. Especially when the rationale of environmental costs caps is to avoid inappropriate deterrence or chilling effects. All of which is because something bigger than all of us is at stake: the environment which we share with each other, and with others, and for which we are responsible.

Natural England's Fairer Balance

58. Natural England has, through its lawyers, skilfully constructed and presented a Rule 27 application for costs caps variations, essentially as striking a fairer balance, as follows: that costs caps of £20,000 (Wild Justice) and £30,000 (Badger Trust) would produce a

measured and proportionate overall cap of £50,000 on what Natural England could recover if it successfully defends this claim; that this is a modest adjustment where Wild Justice has a two-fold and Badger Trust a three-fold increase; that costs burdens for a public authority like Natural England are real and produce detrimental real-world deficits; that Wild Justice and Badger Trust have been able to make budgeted arrangements for £10,000 each towards Natural England's costs, plus £37.5k (Wild Justice) and £21k (Badger Trust) as £58.5k for its own lawyers' fees (and court fees of £1k); that this is a fair balance; that Wild Justice and Badger Trust chose to pitch for £52,486 crowdfunding and succeeded (£57,180), could as envisaged have gone for more, and still could go for more; that the £78.5k to which they have budgeted has been reduced by the crowdfunding (£57,180); that the rest is real-world affordable, given Wild Justice's £57,576 cash in the bank (8.10.25), and Badger Trust's reserves of £326,354 (31.12.24) even put alongside ringfencing for a projected 12 months' expenditure (£310,000), under what is after all a chosen policy not a legally required one; that the claim is not a strong one; that the exercise of invited scrutiny of the financial information has been entirely appropriate; that this backward-looking claim, where Government policy is known to favour curtailed licensing of badger culls, the implications for the environment are very limited; that the witness statements about reluctantly withdrawing the claim should not be taken to be the real-world present position of Wild Justice and Badger Trust; and that, having regard to the prescribed statutory relevancies, these proposed increased caps (or some intermediate position) are not prohibitive expensiveness under Limb (a) or Limb (b).

59. Skilfully constructed and presented as it was, I have had no hesitation in rejecting the application. I have explained my reasons. I think Natural England's focus was too much on suggested real-world affordability (Limb (a)), and not enough on the freestanding concept of objective unreasonableness, viewed against the mandatory relevancies and in the context of the overarching purpose of facilitating access to environmental justice with its public interest imperative, and all in the context of a viable and undiluted environmental protection judicial review claim.

Nature of the Exercise

60. I add this. Natural England has subjected the Claimants' accounts and reserves policies, arrangements for legal teams, and arrangements for fundraising to close scrutiny. There were invitations to look at the financial information in a particular way, including some inferences. A considerable portion of a 3-hour hearing of the costs cap arguments – preceded by written submissions and pre-reading – were devoted to this exercise.

61. I can see how the mechanism of the Rule 27 Variation allows for that exercise to be invited. And I understand the approach that was taken. But I should be transparent. I was left feeling that it would not be a good thing for access to environmental justice if this sort of exercise were to become an established feature; still less a new norm. The court room during this hearing would, I think, have been a chilling place for responsible environmental NGOs, contemplating viable environmental protection judicial review claims. As I see it, the whole point of Rule 26 Caps is to have a degree of appropriate prospective reassurance. The idea of spiralling costs from satellite litigation, introducing uncertainty and costs risk, for the purpose of this kind of exercise, could clearly stand as a practical disincentive. And it could be hard for responsible lawyers to offer environmental NGO clients real, practical comfort. And so, all in all, I was left feeling that it was particularly appropriate that the Court should respond as robustly,

straightforwardly and clearly as it legitimately could. I have tried to do that. It is not a coincidence.

Conclusion

62. I assess as objectively unreasonable any increase to the Rule 26 Caps in the present case. I refuse the application for variations in the Aarhus costs caps. It follows that Natural England must pay the Claimants' costs of its failed variation application.

IV. ORDER

63. The parties were agreed as to the terms of the appropriate Order, in light of this judgment which they had received in draft. The terms used in the Order are defined in agreed recitals to the Order. The "Aarhus Application" means Natural England's application under CPR 46.27 for variation of the maximum costs liabilities of each of the Claimants. The "Redactions Application" means Natural England's application dated 23 May 2025. The "Confidential Versions" means confidential versions of the Decision Documents numbered 1.02, 1.03, 2.01, 2.03-2.07, 2.09, 2.10, 3.01-3.06. The "Information" means the highlighted text in the Confidential Versions (ie. names and email addresses of junior Natural England staff said to have had only a peripheral role in the Decision, together with telephone contact details of all Natural England staff).

64. I am ordering as follows: (1) The Aarhus Application is dismissed. (2) Natural England shall pay the Claimants' costs of the Aarhus Application on the standard basis, to be assessed if not agreed. (3) Any application by a non-party to these proceedings to obtain the Confidential Versions from court records shall be made on notice to the parties and shall be determined at a hearing at which the parties shall be entitled to make submissions as to the disposal of that application and any consequential orders. (4) The costs of the Redactions Application shall be the Claimants' costs in the case. I will also order, by consent, as follows: (5) The Claimants and Interested Party: (i) shall maintain the confidentiality of the Information; (ii) shall not provide the Confidential Versions to any person who is not an officer, employee, servant, or legal representative of the parties, or clerk or administrative assistant to the legal representatives as may be necessary in the proper conduct of the proceedings; and (iii) shall refrain from stating the Information orally in open Court or in any skeleton argument or other written submission, without the prior consent of the Defendant or further order of the Court.